

# Annual Report 2022



Initiative on  
**Climate Risk  
& Resilience Law**

The Initiative on Climate Risk and Resilience Law (ICRRL) is a partnership focused on legal efforts on climate risk and resilience, particularly at the intersection of practice and scholarship

**ICRRL is dedicated to driving recognition of climate risk and resilience through:**

- ❖ Generation of original scholarship, practitioner resources, and legal filings on the subject of climate risk and resilience
- ❖ Synthesis and explication of evidence and best practices across sectors and geographies
- ❖ Collaborative engagement across interested entities, stakeholders, and parties

**Principles:**

- ❖ Climate risk and resilience must be embedded into the fabric of the law
- ❖ Enhancing climate resilience requires coordination among and within governments
- ❖ Resilience measures should be designed and implemented with the needs of communities that face greater risks from climate change in mind
- ❖ Climate science yields decision-useful information that should be incorporated into decision-making processes

Across ICRRL, team members have engaged through agency filings, blogs and news articles, reports, journal articles, and summary documents, testified before legislators or regulators, and hosted a webinar.

- Agency Filing
- Blog/News Article
- Report
- Journal Article
- Testimonial
- Summary Document
- Webinar



*Public products from June 2021 launch through May 2022*

### ICRRL Highlights (*below*)

- ❖ *Mandating Disclosure of Climate-Related Financial Risk*
- ❖ *Evaluating Climate Risk in NEPA Reviews: Current Practices and Recommendations for Reform*
- ❖ *Climate Risk in the Electricity Sector: Legal Obligations to Advance Climate Resilience Planning by Elec. Utilities*
- ❖ *Climate Resilience and Private Law's Duty to Adapt*

# Mandating Disclosure of Climate-Related Financial Risk

Report released February 10, 2021

*Forthcoming* N.Y.U. J. LEGIS. & PUB. POL'Y (2022)

**Abstract.** Climate change presents grave risk across the U.S. economy, including to corporations, their investors, the markets in which they operate, and the American public at large. Unlike other financial risks, however, climate risk is not routinely disclosed to the public. This report, authored by Policy Integrity and Environmental Defense Fund, urges the Securities and Exchange Commission to issue new, mandatory disclosure rules focused on climate risk.

This report also provides process-oriented recommendations for designing disclosure rules that will yield comparable, specific, and decision-useful information on climate risk. Specifically, the authors recommend:

- ❖ Drawing best practices from existing frameworks and standards
- ❖ Soliciting input from financial and climate experts, corporations, and investors through concept releases and/or a climate risk advisory committee
- ❖ Coordinating with other financial regulators and drawing on climate-related expertise at other federal agencies through interagency working groups
- ❖ Developing greater SEC expertise in this area by having the Division of Economic and Risk Analysis conduct economic research on climate risk.

Read the full report [here](#)

ICRRL has additionally [submitted](#) comments to the SEC itself, in response to the Commission's request for information regarding climate-related disclosures. The SEC subsequently issued a proposed rule, and ICRRL members continue to engage.

# Evaluating Climate Risk in NEPA Reviews: Current Practices and Recommendations for Reform

Report released February 15, 2022

**Abstract.** This report, jointly published by ICCRL, EDF, and the Sabin Center, finds that federal agencies are not adequately considering climate change impacts in reviews conducted under the National Environmental Policy Act (NEPA). In order to fulfill NEPA's requirements to take a "hard look" at the environmental effects of proposed actions, federal agencies must consider how the changing weather and environmental conditions brought by climate change might impact an action and alter its environmental effects. However, none of the 65 environmental impact statements that agencies issued in relation to onshore energy activities from 2016 through 2020 contained sufficiently holistic, specific, and actional climate impact analysis to inform agency decision-making.

To bridge the gap between NEPA's requirements and agencies' current practices, the report recommends:

- ❖ The Council on Environmental Quality should update its NEPA implementing regulations to explicitly require climate impact analysis and should identify best practices for this analysis in updates to its climate guidance.
- ❖ Other federal agencies should update their own NEPA regulations and practices to ensure robust climate impact analysis.
- ❖ The Council on Environmental Quality should coordinate across federal agencies and relevant experts and create or support the creation of a database of climate impact information.

Read the full report [here](#).

## Climate Resilience and Private Law's Duty to Adapt

*Forthcoming North Carolina Law Review (2022)*

**Abstract.** This Article presents a historical, evidentiary, and normative case for a private tort against public utilities for failure to adjust operational and planning decisions to new conditions brought about by climate change. As an extension of the traditional utility duty to serve, the tort duty to adapt includes obligations of reasonable notice of service interruption, avoidance of unnecessary power outages, and updating technologically available standards in operations and planning to encompass the foreseeable risks of climate change. Modern examples of extreme weather service outages, hurricanes, and wildfires are surveyed to demonstrate an evidentiary basis for judicial recognition of a tort duty for public utilities to take reasonable safety precautions to reduce adaptation risks. A private law duty to adapt for public utilities complements existing regulation in addressing rapidly emerging risks presented by climate change.

Read the full article [here](#)

# Climate Risk in the Electricity Sector: Legal Obligations to Advance Climate Resilience Planning by Electric Utilities

ENVIRONMENTAL LAW REVIEW (2021)

**Abstract.** Electricity generation, transmission and distribution, and load are all impacted by weather patterns. Electric system assets have been designed for historic weather conditions, with the goal of ensuring reliability and quick recovery following extreme events. However, climate change is causing major shifts in historic weather patterns and more frequent and severe extremes, which are creating new risk profiles for the electric system. Proactive climate resilience planning by electric utilities to identify, respond, and rationally allocate these climate risks is thus increasingly salient. This paper argues that it is also legally required.

Recently published industry studies demonstrate that accurate, specific, and actionable climate resilience planning is possible. Nevertheless, and despite the significant benefits of climate resilience planning, relatively few electric utilities have engaged in the process. This paper explores two legal doctrines, public utility law and tort law, which we argue obligate electric utilities to plan for the impacts of climate change on their assets and operations. Public utility law requires electric utilities to meet, among other things, prudent investment and reliability standards. Tort law establishes a duty of care that obligates electric utilities to, among other things, avoid foreseeable harm when performing acts that could injure others. We argue that, as climate science becomes more precise and predictive, these legal standards take on new meaning and require electric utilities to engage in climate resilience planning.

Read the full report [here](#)

## Team

### Environmental Defense Fund

Michael Panfil  
Jeffrey Fralick  
Noha Haggag  
Stephanie Jones  
Gabriel Malek

### Institute for Policy Integrity at New York University School of Law

Justin Gundlach  
Jack Lienke  
Dena Adler  
Sarah Ladin  
Bridget Pals  
Alex Song

### Columbia Law School's Sabin Center for Climate Change Law

Romany Webb  
Jacob Elkin  
Jessica Wentz

### Vanderbilt Law School

Jim Rossi

### Expert Advisory Board

Michael Burger, Sabin Center for Climate Change Law  
Robert Engle, NYU Stern School of Business  
Namrita Kapur, Yale School of Management  
Suedeen Kelly, Jenner & Block  
Vickie Patton, Environmental Defense Fund  
Richard Revesz, NYU School of Law  
Raya Salter, Energy Justice Law and Policy Center  
Michael Vandenbergh, Vanderbilt Law School  
David Victor, School of Global Policy and Strategy at UC San Diego